



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase
Director

SUBJECT: SEE BELOW

DATE: December 6, 2001

COUNCIL DISTRICT: 4

SUBJECT: CP 00-01-004 Status Report of Compliance Review for a Conditional Use Permit for a project located at the northeast and northwest corners of Commercial Street and Berryessa Road, on a 5.69 gross acre site in the HI Heavy Industrial Zoning District for the expansion of an existing recycled metals processing facility.

BACKGROUND

On February 1, 2000, Conditional Use Permit Application No.CP00-01-004 was filed for the purpose of legalizing the expansion of an existing recycled metals processing facility. The metal recycling operation was in operation on one parcel (APN# 241-05-012) prior to annexation to the City of San Jose. Subsequent to the area's annexation, operations were expanded onto three additional parcels without benefit of permit. On November 2, 2000, the Planning Commission approved the subject Permit application with some added conditions applied to the operation of the recycling facility. The applicant signed the permit acceptance agreement and consent form on January 8, 2001. The permit was approved with a condition requiring that a Compliance Review be held one year from the date the Conditional Use Permit was approved.

The Conditional Use Permit allows the operation of all functions of a metal recycling business on two parcels located at the northeast corner of Commercial Street and Berryessa Road and the limited use of two parcels on the western side of Commercial Street for vehicle and container storage.

City Planning and Code Enforcement Division staff visited the subject property in January of this year to perform a review of the site's compliance, and determined that physical improvements to the site included within the Permit had not been implemented at that time. The current operation of the facility, furthermore, was found to not adhere to the operational conditions included within the Permit. Based on this information, the Director of Planning issued a Notice of Non-Compliance on February 8, 2002. The notice was refused by the applicant and returned by mail to the Department of Planning Building and Code Enforcement. Staff subsequently sent by fax a

copy of the Notice of Non-Compliance and delivered a copy in person to the site. When it was determined that operation of the recycling facility continued without compliance to the governing Conditional Use Permit, the Director of Planning issued an Order to Show Cause on February 27, 2002 for failure to abate, correct or rectify within the time specified by the Director in the Notice of Non-Compliance.

The Planning Commission conducted a hearing on March 27, 2002 to consider the issue of non-compliance for the subject property. The Commission decided to revoke the subject Permit and reissue it with added conditions, including specific deadlines for the implementation of the Permit and a requirement for a compliance review to be conducted four months from the date of the reissued Permit.

ANALYSIS

The reissued Permit (attached) included the following text as a subsequent condition:

Implementation Deadlines. The property shall be considered in non-compliance with this Permit if at any point the following improvements have not been fully implemented in the indicated time frame.

- a. The applicant shall be in full compliance with Condition No. 16 requiring the applicant to obtain Public Works Clearance by 5:00 p.m. on July 15, 2002.
- b. The applicant shall be in full compliance with Condition No 17 requiring the applicant to obtain Permits from the Building Department by 5:00 p.m. on August 1, 2002.
- c. The applicant shall provide planting and irrigation as indicated on the approved plan set, and shall provide the required 12-foot masonry wall along the properties street frontage, all by 5:00 p.m. on August 13, 2002.
- d. The applicant shall have fully implemented all required conditions in the approved Conditional Use Permit, file No. CP00-01-004 by 5:00 p.m. on December 13, 2002.

If these deadlines are not met, the City of San Jose shall consider the subject use in non-compliance with this permit and will initiate appropriate enforcement compliance proceedings.

As of the date of this report, the applicant has not met the first deadline (item a. above). Five items required to complete the Public Works Clearance remain unresolved.

A primary requirement that remains incomplete is a reimbursement due to the City for \$265,598. This reimbursement would pay for street improvements previously made by the City to Commercial Street. It is standard City policy to collect reimbursement for public improvement

projects at the time of redevelopment of the benefiting properties. Fees are collected based upon the dollar amount of costs incurred by the City at the time the improvement project was completed. Because the costs are not adjusted to reflect current dollar values, there can be a significant financial benefit for the concerned property owners. A substantial portion (\$116,134) of the fee due is a reimbursement for the property purchase made by the City to allow the construction of Commercial Street. The owner of the subject property was paid with the understanding that they would need to reimburse the City at some point in the future when the property was redeveloped. Because the subject Permit allows the redevelopment of the property for a new use, the reimbursement is now due. In 1998, the current applicant was provided with an estimate (attached) of the amount due and reminded of this at least once in a meeting held with Public Works staff on January 7th of this year. In correspondence dated July 15, 2002 (attached), the applicant indicates he will have trouble paying this reimbursement at this time, but will work towards a resolution. The City considers improvement of adjacent public right-of-ways as a standard requirement for a property owner to redevelop a property with a new use or structure. In this particular case, the property owner began a new use on the subject properties without the benefit of a Permit and without fulfillment of the required public improvements. The recycling facility is continuing to operate at this time without meeting the improvement requirements of the Conditional Use Permit.

In order to complete the Public Works Clearance, the applicant must still also pay a utility undergrounding fee (\$86,000), post bonds for the construction of curb, gutter and sidewalk along Commercial Street, make a dedication of property along Berryessa Road and provide a legitimate signature on the Construction Agreement document. These requirements are noted in the approved Permits, and were also noted in memoranda sent to the Applicant following the initial Permit submittal in January 2000 and subsequently.

Permit History

The subject Permit was issued to allow resolution of a Code Enforcement action begun against the property in April of 1999. The action was initiated after the City had received numerous complaints about the property from area residents. The property owner was initially issued a Compliance Order with a Compliance Date of November 15, 1999. The applicant was granted an extension and eventually filed the subject Permit application on February 2, 2000, shortly after the second compliance deadline.

On March 7, 2000, Planning staff provided the applicant with an initial response letter including a list of the documents required for staff to determine that the application is complete. The applicant's initial submittal included only a schematic site plan and none of the additional documents enumerated in the Conditional Use Permit plan set requirements.

An inspection conducted by a Code Enforcement Officer on February 4, 2000 determined that operation of the metal recycling business had been further expanded on to two additional properties without required permits. A second Compliance Order was issued by the Officer with a compliance date of March 17, 2000. After consultation with Planning staff, on April 21, 2000, the

applicant submitted a revised schematic site plan and additional fees to expand the pending application to include the additional expansion area.

On June 8, 2000, Planning staff sent a letter to the applicant indicating a July 25, 2000 deadline for submittal of revised plans. No communication was received from the applicant during this period and the project was scheduled for hearing by the Planning Commission on August 30, 2000.

On August 10, 2000, an engineer hired by the applicant contacted Planning staff and requested a meeting to discuss project requirements. A meeting was held on August 16, 2000, and at the request of the applicant, the Planning Commission hearing was deferred to November 2, 2000 to allow the applicant additional time to prepare a complete application. The application was approved by the Planning Commission at the November 2nd hearing with various conditions including a requirement for a one-year compliance review.

On November 19, 2001 the applicant submitted a Permit Adjustment application to the Planning Division and was granted Planning approval of the design for the proposed 12-foot screen wall on the eastern properties. The Adjustment was required because the plan set approved with the Conditional Use Permit did not include elevations and designated construction materials for the screen wall. The applicant then attempted to obtain Building Permits to construct the wall but was prevented from doing so pending completion of the Public Works Development Clearance requirement included within the subject Permit. The applicant then began discussion with the Public Works Department over the requirements for the Clearance, including the January 7, 2002 meeting described above.

Conclusion

The applicant was given 18 months to comply with the conditions of the approved Conditional Use Permit. In that time the applicant has made progress towards the completion of the Public Works and Building Permit processes, but has not been able to begin actual implementation of the required conditions of approval. Staff considers the applicant to be in non-compliance with the approved Conditional Use Permit No. CP00-01-004 and in specific non-compliance with Subsequent Condition 5.a which requires completion of Public Works Clearance by July 15th.

As the subject recycling facility continues to operate in non-compliance with an issued Conditional Use Permit and specifically, has not met a deadline incorporated into that Permit to demonstrate substantive progress towards the Permit's implementation, the property will immediately be subject to action through Code Enforcement proceedings. Code Enforcement staff has already scheduled the project for hearing before the Appeals Hearing Board on September 12, 2002. This constitutes the best procedure available to the City to bring the property into compliance with City regulations. Staff will provide additional updates to the Planning Commission on the status of the project, and retains the possibility of a subsequent Order to Show Cause hearing before the Commission if necessary.

RECOMMENDATION

Planning staff recommends that the Planning Commission review the compliance information provided in the staff status report.

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Deputy

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